

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**PRO CUSTOM SOLAR LLC d/b/a  
MOMENTUM SOLAR**

**Case No. 22-CA-254647**

**and**

**TALIYAH AVENT, SEYNABOU FALL, HOWARD  
NIGHT, JR., MOHAMMED NAIM, KENNY NGUYEN,  
MAXZIM WONG and YOSELIN ZAMORA**

*Colleen Pierce Breslin, Esq.*, for the General Counsel.  
*Paul A. Montalbano, Esq. (Cohen, Leder, Montalbano &  
Connaughton)*, of Elmwood Park, New Jersey,  
for the Charging Parties  
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for the Respondent

**DECISION**

Statement of the Case

**LAUREN ESPOSITO, Administrative Law Judge.** This case was submitted to me for a decision based upon a Motion to Waive Hearing and Seek Decision on the Papers, which I granted on February 4, 2021. Based upon a charge filed on January 15, 2020 by Taliyah Avent, Seynabou Fall, Howard Night, Jr., Mohammed Naim, Kenny Nguyen, Maxzim Wong and Yoselin Zamora (collectively referred to as the Charging Parties), on June 3, 2020, the Regional Director, Region 22, issued a Complaint and Notice of Hearing against Pro Custom Solar LLC d/b/a Momentum Solar (Momentum or Respondent). The Complaint alleges that Momentum violated Section 8(a)(1) of the Act by discharging Charging Party Mohammed Naim on or about January 3, 2020, and by discharging the remainder of the Charging Parties and other employees on or about January 4, 2020, in retaliation for their concerted activities. The Complaint further alleges that Momentum Solar violated Section 8(a)(1) by interrogating employees regarding their concerted activities, implying that their concerted activities were under surveillance, and threatening employees with demotion and discharge if they engaged in concerted activities. Momentum filed an Answer on June 17, 2020 denying the Consolidated Complaint's material allegations.

On the entire stipulated record, and after considering the briefs filed by General Counsel and Momentum, I make the following

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## Findings of Fact

## I. Jurisdiction

10 Momentum, a corporation with an office and place of business in South Plainfield, New Jersey, has at all material times been engaged in the performance of home improvements and sales and installation of residential solar power systems in the State of New Jersey. Momentum admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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## II. Alleged Unfair Labor Practices

20 Momentum is comprised of two divisions, Momentum Solar and Momentum Home. Momentum Solar sells home solar energy systems and handles all aspects of the installation process. Momentum Home sells residential roofing, siding, and windows to customers, and handles the related home improvement processes. At all material times, Alex Sheikh has been Momentum's Managing Partner and Chief Revenue Officer, Kenneth DiLeo has been Momentum's National Director of Canvassing, and David McGinnis has been Momentum's Regional Canvassing Manager. The parties  
25 have stipulated and I find that Sheikh, DeLeo, and McGinnis have at all material times been supervisors of Momentum within the meaning of Section 2(11) of the Act, and agents of Momentum within the meaning of Section 2(13). Sheikh, DiLeo, and McGinnis comprise and will be referred to as Momentum's "Management Team." Jt. Stipulation of Facts at ¶¶ 4, 5.

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Both Momentum Solar and Momentum Home employ sales representatives, referred to as "canvassers," whose primary job function is to sell Momentum's products and services by door-to-door solicitation. Canvassers travel to designated residential territories and go to homes door-to-door, educating potential customers regarding  
35 available products and services. Canvassers attempt to convince potential customers to meet with Respondent's technical sales personnel for a demonstration, referred to as a "demo," and potential sale, referred to as a "sale." On or about January 1, 2020, Charging Parties Taliyah Avent, Seynabou Fall, Howard Knight, Jr., Mohammed Naim, Kenny Nguyn, Maxzim Wong, and Yoselin Zamora were employed by Momentum as  
40 canvassers in the Momentum Home division operating out of Respondent's South Plainfield, New Jersey, location. Elijah Byrd, Mariah Robinson, Erik Sapp, Lisabeth Senvage, Ejahnn Banks, Gykeese Bosenan, Malcolm Cotton, Manueal Fernandez, Steven Mercedes, Bryan Rodriguez, Miles Scott, and Zhane Taylor were also employed as canvassers in the Momentum Home division operating out of South Plainfield, New  
45 Jersey, at that time. The Charging Parties and other canvassers will be collectively referred to as the "Canvassing Employees." Jt. Stipulation of Facts at ¶¶ 6, 7.

The Canvassing Employees worked in crews or "teams" of five to six employees, with a Team Leader who serves as a van driver and functions as a field coordinator.  
50 The parties have stipulated and I find that the Team Leaders were neither supervisors

5 within the meaning of Section 2(11) of the Act nor agents pursuant to Section 2(13) during the relevant time period. Jt. Stipulation of Facts at ¶¶ 8, 9.

10 The Canvassing Employees and Team Leaders worked Monday through Saturday. Team Leaders reported to work at 9:00 a.m. and planned the daily territory and routes for the Canvassing Employees to traverse. The Canvassing Employees' workday began at or about 10:00 a.m., when they reported to Momentum's South Plainfield facility and attended a mandatory one-hour team meeting (the Team Meeting), which is considered an essential part of each Canvassing Employees' work day. At the Team Meeting, the Canvassing Employees and Momentum's supervisor and managers review the previous day's sales and outcomes as well as performance goals and strategies, conduct training on sales pitches and rebuttals, and prepare for the day's canvassing activities. Following the Team Meeting, each team of Canvassing Employees would board a company van and leave the South Plainfield facility to complete the balance of their work day performing canvassing activities. Jt. Stipulation of Facts at ¶¶ 10, 11, 12.

25 The Canvassing Employees would often stop for lunch, typically lasting thirty minutes to one hour, before beginning their canvassing activities. Sometimes, the Canvassing Employees would meet at the Menlo Park Mall and have lunch together. At all material times, the Management Team was aware that the Canvassing Employees often took their lunch break together, sometimes in the food court of the Menlo Park Mall, prior to beginning their canvassing activities. Jt. Stipulation of Facts at ¶ 13.

30 Prior to January 1, 2020, the Canvassing Employees were paid in accordance with a compensation plan that provided a flat weekly base pay of \$500 per week, with the opportunity to earn bonuses and additional compensation based upon performance. Team Leaders were paid a base pay of \$750 per week.<sup>1</sup> Both the Team Leaders and other Canvassing Employees also earned a bonus of \$50 for each demo and \$150 for each sale eventually secured. Additional bonuses were provided in accordance with Momentum's compensation plan applicable to the Canvassing Employees. Jt. Stipulation of Facts at ¶ 14; Jt. Ex. 2.

40 In or about late December 2019, National Director of Canvassing DiLeo informed the Canvassing Employees at a regularly scheduled Team Meeting that Momentum was in the process of developing a new compensation plan for them. DiLeo discussed the concept underlying the new compensation plan with the Canvassing Employees at this meeting, but did not describe the specifics of the new compensation plan. The new compensation plan was put into effect on or about January 1, 2020. Jt. Stipulation of Facts at ¶¶ 15, 16.

45 On or about January 2, 2020,<sup>2</sup> at a regularly scheduled Team Meeting with all of the Canvassing Employees present, DiLeo introduced the new compensation plan and

<sup>1</sup> In their Stipulation of Facts, the parties reserved the right to dispute the base pay amount for Team Leaders. Jt. Stipulation of Facts at ¶ 14.

<sup>2</sup> All subsequent dates are in 2020 unless otherwise indicated.

described the plan in detail. The new compensation plan eliminated the bonuses for individual demos and sales, implemented new parameters for weekly and monthly bonuses based solely on demos, and introduced a quarterly bonus. Specifically, the new compensation plan required Canvassing Employees to secure a minimum of four demos to receive a weekly bonus, twelve demos to receive a monthly bonus, and a minimum of \$100,000 in volume to receive a quarterly bonus. Jt. Stipulation of Facts at ¶ 17; Jt. Ex. 3. Some of the Canvassing Employees, including Charging Party Naim, expressed concerns about the new compensation plan, and raised questions, which DiLeo answered. Jt. Stipulation of Facts at ¶ 18.

Following the January 2 meeting, the Canvassing Employees boarded their vans and drove to the Menlo Park Mall, where they congregated in the food court for their lunch break. During their lunch break, they discussed the new compensation plan, including questions and concerns they had regarding the plan. While the Canvassing Employees were gathered in the food court, DiLeo spoke by cell phone to one of the Canvassing Employees present. During that call, DiLeo: (a) interrogated the Canvassing Employee regarding the Canvassing Employees' concerted activities; (b) threatened the Canvassing Employees with demotion and discharge if they engaged in concerted activities; and (c) implied that the protected concerted activities of the Canvassing Employees were under surveillance. The parties have stipulated that by this conduct, Momentum interfered with, restrained, and coerced the Canvassing Employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. Jt. Stipulation of Facts at ¶¶ 18, 19, 20; Complaint 19¶.

On or about January 3, at the Canvassing Employees' regularly scheduled team meeting, Momentum's Management Team and the Canvassing Employees discussed the new compensation plan further, with the Management Team responding to the Canvassing Employees' questions. Several Canvassing Employees, including Naim, voiced complaints and concerns regarding the new compensation plan, and other Canvassing Employees vocalized their support for the plan. Because the Canvassing Employees were divided, the Management Team conducted an informal poll of the Canvassing Employees at the January 3 Team Meeting to determine whether a majority supported the new compensation plan, or preferred the original compensation plan. A majority of the Canvassing Employees expressed their preference for the original compensation plan. After the poll, the discussion continued, and the Canvassing Employees continued to debate the merits of the new and original compensation plan. The January 3 Team Meeting ended without any final resolution of the matter. The parties have stipulated that the Canvassing Employees engaged in protected concerted activity when they vocalized complaints and concerns regarding the new compensation plan and responded to the Management Team's poll. Jt. Stipulation of Facts at ¶¶ 21, 22, 23, 24, 25, 26.

On or about January 4, at the Plainview, New Jersey facility, Naim was discharged at around 9:00 a.m., after he had reported to work. Momentum discharged Naim in part because he concertedly complained to Momentum regarding the new compensation plan implemented for the Canvassing Employees, which could have the

5 effect of discouraging employees from engaging in these or other concerted activities. The parties have stipulated that by such conduct, Momentum interfered with, restrained, and coerced the Canvassing Employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. Jt. Stipulation of Facts at ¶¶ 27, 28; Complaint ¶ 27.

10 At around 10:00 a.m. on January 4, all remaining Canvassing Employees except for Zhane Taylor reported to work as usual and attended the regularly scheduled Team Meeting, which was conducted by Regional Canvassing Manager McGinnis. During the January 4 Team Meeting, there were no notable issues raised by the Canvassing  
15 Employees regarding the compensation plan or any other matter. Before the Canvassing Employees left Momentum's facility on January 4, Naim interrupted the Team Meeting and informed the other Canvassing Employees that he had been discharged. Naim was directed to leave the Team Meeting and leave the Momentum facility. Jt. Stipulation of Facts at ¶¶ 29, 30.

20 Following the January 4 Team Meeting, the Canvassing Employees boarded the vans and drove to the Menlo Park Mall for lunch, congregating in the food court. In the food court, they concertedly discussed Naim's discharge and the differences between the new and original compensation plans. Some of the Canvassing Employees,  
25 including the Team Leaders, who were solely responsible for driving the vans, also decided that they were not going to return to work that day in protest of Naim's discharge and Momentum's implementation of their new compensation structure. The Team Leaders on January 4, who were responsible for driving their respective teams to the canvassing territory, were Manuel Fernandez, Maxzim Wong, and Seynabou Fall.  
30 The parties have stipulated that the discussion of Naim's discharge and the compensation plan, and the decision to protest Momentum's compensation structure, constitute protected concerted activity. Jt. Stipulation of Facts at ¶¶ 31, 32.

35 Some of the Canvassing Employees wanted to return to work. Those Canvassing Employees that wanted to continue working that day were not able to do so because the Team Leaders were all in favor of not returning to work that day, and so would not drive the vans to the canvassing territories. Jt. Stipulation of Facts at ¶ 33.

40 At around noon on January 4, McGinnis received a text message from Canvassing Employee Zhane Taylor, informing him that the Canvassing Employees were congregated at the Menlo Park Mall and that they did not intend to return to work that day. Zhane Taylor included in this text message that her brother, Miles Scott, was at the Menlo Park Mall with the other Canvassing Employees, and was upset because he was unable to performing his canvassing duties because other Canvassing  
45 Employees, including the Team Leaders, had decided not to go to work for the remainder of the day. McGinnis did not communicate with Miles Scott directly. Jt. Stipulation of Facts at ¶ 34.

50 McGinnis then went to meet with the Canvassing Employees at the Menlo Park Mall. When McGinnis arrived, he found the Canvassing Employees congregated in the

5 food court. The Team Leaders were not present when McGinnis first arrived. McGinnis asked the Canvassing Employees whether they intended to return to work, and the Canvassing Employees informed him that they did not intend to work that day and that they “had a lot to talk about.” McGinnis asked them what they had to talk about, but no one responded. It appeared to McGinnis that the Canvassing Employees were still  
 10 debating the compensation plans amongst themselves. Jt. Stipulation of Facts at ¶¶ 35, 36, 37, 38.

15 Shortly after McGinnis arrived at the food court, the Team Leaders appeared from the parking lot. McGinnis then confirmed with the Team Leaders present that the Team Leaders and the Canvassing Employees did not intend to return to work that day. McGinnis instructed the Team Leaders and Canvassing Employees to return to work, and informed them that they would be terminated if they did not return to work. The Team Leaders and the Canvassing Employees informed McGinnis again that they did not intend to return to work that day. At no time during this exchange at the Menlo Park  
 20 Mall did one of the Canvassing Employees tell McGinnis that he or she wished to go to work but were prevented by doing so by the Team Leaders, as the Team Leaders would have been solely responsible for driving them to their respective canvassing areas. McGinnis then collected the van keys from the Team Leaders and informed the following Team Leaders and other Canvassing Employees that they were terminated  
 25 immediately for insubordination and for failing to perform their job duties:

	Taliyah Avent	Miles Scott
	Seynabou Fall	Ejahanna Banks
	Howard Knight, Jr.	Gykeese Bosenan
30	Kenny Nguyen	Malcom Cotton
	Maxzim Wong	Manuel Fernandez
	Yoselin Zamora	Steven Mercedes
	Elijah Byrd	Mariah Robinson
	Bryan Rodriguez	Eric Sapp
35	Lisabeth Senvage	

Jt. Stipulation of Facts at ¶¶ 39, 40, 41, 42.

40 Later that day, after McGinnis discharged the Canvassing Employees and left the Menlo Park Mall, he received a call from Bryan Rodriguez. Rodriguez informed McGinnis that he wanted to return to work and had not supported the decision not to return to work. Rodriguez asked McGinnis whether he could have his job back, and McGinnis responded that he would talk to DiLeo. Jt. Stipulation of Facts at ¶ 43.

45 Between January 4 and January 6, Momentum rehired several Canvassing Employees, including Gykeese Bosenan, Manuel Fernandez, Erik Sapp, Bryan Rodriguez, and Miles Scott. These individuals contacted DiLeo after they were discharge and asked to have their jobs back. They informed DiLeo that they were not in favor of the decision not to return to work, and that they wanted to return to work on  
 50 January 4, but were unable to do so because the other Canvassing Employees,

5 including the Team Leaders, who were solely responsible for driving the vans that would transport them to their respective canvassing areas, had decided not to return to work. Based on this explanation, DiLeo decided to rehire them. Jt. Stipulation of Facts at ¶ 44.

## 10 Decision and Analysis

### I. The Alleged Violations of Section 8(a)(1) of the Act on or about January 2, 2020

15 The parties have stipulated that while the Canvassing Employees were gathered in the food court of the Menlo Park Mall on January 2, DiLeo spoke by cell phone to one of the Canvassing Employees present. The parties have stipulated that during that call, DiLeo: (a) interrogated the Canvassing Employee regarding the Canvassing Employees' concerted activities; (b) threatened the Canvassing Employees with  
20 demotion and discharge if they engaged in concerted activities; and (c) implied that the protected concerted activities of the Canvassing Employees were under surveillance. The parties have stipulated that by this conduct Momentum interfered with, restrained, and coerced the Canvassing Employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act, and I so find. Jt. Stipulation of Facts at ¶¶ 18, 19, 20; Complaint ¶ 6.  
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### II. The Discharge of Mohammed Naim on or about January 4, 2020

30 The parties have stipulated that on or about January 4, at the Plainview, New Jersey facility, Mohammed Naim was discharged at around 9:00 a.m., and that Momentum discharged Naim in part because he concertedly complained to Momentum regarding the new compensation plan implemented for the Canvassing Employees, which could have the effect of discouraging employees from engaging in these or other concerted activities. The parties have stipulated and I find that by such conduct,  
35 Momentum interfered with, restrained, and coerced the Canvassing Employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act. Jt. Stipulation of Facts at ¶¶ 27, 28; Complaint ¶ 27.

### 40 III. The Discharge of the Other Charging Parties and Canvassing Employees on or about January 4, 2020

The Complaint alleges that Respondent violated Section 8(a)(1) of the Act by discharging Avent, Fall, Knight, Nguyen, Wong, Zamora and the other Canvassing Employees on January 4. General Counsel contends that Momentum discharged the  
45 Canvassing Employees in retaliation for their protected work stoppage that day, in violation of Section 8(a)(1). Momentum argues that its discharge of the Canvassing Employees did not violate the Act because the Canvassing Employees were engaged in an unprotected partial strike or slowdown. Momentum further argues that the Canvassing Employees' activity lost the Act's protection because their activities

5 impermissibly impinged upon Momentum's property rights pursuant to *Quietflex Mfg. Co.*, 344 NLRB 1055 (2005).

10 The Board analyzes cases involving employer motivation using the theoretical framework articulated in *Wright Line*, 251 NLRB 1083 (1980), *enf'd.* 662 F.2d 899 (1<sup>st</sup> Cir. 1981); see also *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 395 (approving the *Wright Line* analysis); *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 at p. 7 (2019). Pursuant to *Wright Line*, General Counsel must satisfy their initial burden by persuading by a preponderance of the evidence that employee protected conduct was a motivating factor in the employer's adverse employment action. In order to do so, 15 General Counsel must adduce evidence to demonstrate that the employee or employees in question engaged in union or protected concerted activity, the employer's knowledge of that activity, and anti-union animus on the part of the employer. *Adams & Associates, Inc.*, 363 NLRB No. 193 at p. 6 (2016), *enf'd.* 871 F.3d 358 (5<sup>th</sup> Cir. 2017).

20 General Counsel's satisfaction of their initial burden pursuant to *Wright Line* establishes a violation of the Act, subject to the employer's demonstrating that "the same action would have taken place in the absence of the protected conduct. *Wright Line*, 251 NLRB at 1089. In order to meet this standard, the employer must do more than assert a legitimate basis for the adverse employment action or show that legitimate 25 reasons affected its decision. Instead, it must "persuade...by a preponderance of the evidence" that "the action would have taken place absent protected conduct." *Weldun International*, 321 NLRB 733 (internal quotations omitted), *enf'd.* in relevant part 165 F.3d 28 (6<sup>th</sup> Cir. 1998); see also *NLRB v. Transportation Management Corp.*, 462 U.S. at 401.

30 The primary issue here is whether the Canvassing Employees' work stoppage on January 4 constituted protected concerted activity pursuant to Section 8(a)(1) of the Act. I note at the outset that the evidence establishes and there is no meaningful dispute that the Canvassing Employees' activities on January 4 were concerted in nature. The 35 January 4 refusal to work took place immediately following their discussions regarding Naim's discharge and the impending changes in the compensation plan. There is no dispute that the Canvassing Employees had engaged in protected concerted activity by raising complaints and concerns regarding the new compensation plan at the Team Meeting on January 3, and by responding to the Management Team's poll regarding the 40 issue. Although there was apparently no discussion regarding the compensation plan at the January 4 Team Meeting before the Canvassing Employees drove to the Menlo Park Mall, during the January 4 Team Meeting the Canvassing Employees learned that Naim had been discharged by Momentum because, as the parties have stipulated, Naim concertedly complained regarding the new compensation plan. In addition, as 45 General Counsel notes, concerted activity regarding compensation is generally protected. Indeed, the Board has stated that, "there can be no doubt that there is no more vital term and condition of employment than one's wages, and employee complaints in this regard clearly constitute protected activity." *Rogers Environmental Contracting*, 325 NLRB 144, 145 (1997), quoting *Cal-Walts, Inc.*, 258 NLRB 974, 979 50 (1981); see also *Northfield Urgent Care, LLC*, 358 NLRB 70, 80 (2012).



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Momentum contends that the Canvassing Employees' work stoppage was unprotected because it constituted a partial strike pursuant to Board precedent. The Board has determined that in order to retain its protected status, "a strike or [work] stoppage must be complete, that is, the employees must withhold all their services from their employer." *Spurlino Materials, LLC*, 357 NLRB 1510, 1524 (2011), *enf'd*. 805 F.3d 1131 (D.C. Cir. 2015), quoting *Audubon Health Care Center*, 268 NLRB 135, 137 (1983); see also *Vencare Ancillary Services, Inc. v. NLRB*, 352 F.3d 318 (6<sup>th</sup> Cir. 2003) ("employees must *completely stop* working or risk being discharged for engaging in unprotected activity") (emphasis in original). Thus, where employees remain on the job and "refuse to perform some job duties while continuing to perform others," they are engaged in a partial strike and consequently forfeit the Act's protection. *Ohio Bell Telephone Co.*, 370 NLRB No. 29 at p. 3 (2020).

The record evidence, however, does not establish that the Canvassing Employees were engaged in a partial strike on January 4. The evidence indicates that after discussing the new compensation plan and Naim's discharge at the Menlo Park Mall, some of the Canvassing Employees, including the Team Leaders, decided that they would not continue to work for the rest of the day. Thus, when McGinnis arrived at the Mall after receiving Canvassing Employee Zhane Taylor's text, the Team Leaders and Canvassing Employees informed him that the Canvassing Employees did not intend to perform any additional work that day. McGinnis responded by immediately discharging them and collecting the keys to the company vans. There is no evidence that the Canvassing Employees subsequently performed some portion of their duties during the remainder of the work day on January 4, while refusing to perform other work.

Momentum argues that the Canvassing Employees engaged in a partial strike by attending the Team Meeting on January 4 and refusing to perform their duties thereafter. However, the evidence establishes that after the January 4 Team Meeting the Canvassing Employees did not "remain on the job," but informed McGinnis that they did not intend to perform any work at all for the remainder of the day, after which they were immediately discharged. In cases addressing partial strikes, by contrast, the Board and the courts have emphasized the employees' refusal to perform some work duties while *simultaneously* remaining on the job and performing others. For example, in *Audubon Health Care Center*, the Board determined that nurses aides' engaged in a partial strike when they continued to perform all work duties in their regularly assigned sections of the Respondent nursing home, but refused to perform work covering "open sections" which had no specifically assigned aide. 268 NLRB at 135, 136-137; see also *Yale University*, 330 NLRB 246, 247-248 (1999) (teaching fellows engaged in an unprotected partial strike by withholding final student grades while continuing to meet with students, grade other materials, prepare letters of evaluation, and prepare for the upcoming term's classes). And in *Vencare Ancillary Services, Inc. v. NLRB*, the Sixth Circuit, declining to enforce a Board order, found that rehabilitation therapists engaged in a partial strike when they refused to see patients but remained in their work area and completed required paperwork. 352 F.3d at 322-325; see also *NLRB v. Montgomery*

5 *Ward & Co.*, 157 F.2d 486, 496-497 (8<sup>th</sup> Cir. 1946) (employees who remained at work and continued to process all orders, except for those associated with an employer facility where the employees were on strike, engaged in an unprotected partial strike). Thus, in all of these cases, the employees remained on the employer's premises and continued to perform some work, while refusing to perform other tasks.

10 Furthermore, the evidence in the instant case establishes a significant intervening event in connection with the January 4 Team Meeting, which was part of the Canvassing Employees' regular workday, and their refusal to work for the rest of the day. For it was only at the January 4 Team Meeting that the Canvassing Employees  
15 learned of Momentum's concededly unlawful discharge of Naim earlier that morning. This evidence supports a conclusion that the employees did not engage in a partial strike by attending the Team Meeting and refusing to perform any work thereafter, but instead began a strike, refusing to perform any work at all, after learning of Naim's discharge in retaliation for his concerted complaints regarding to the new compensation  
20 plan.

Finally, Momentum argues that the Canvassing Employees' work stoppage was a unprotected because they failed to inform a company representative that they were engaged in some sort of collective action when they refused to work on January 4. This  
25 argument is based upon the Sixth Circuit's statement in *Vencare Ancillary Services, Inc. v. NLRB* that "The underlying rationale of the prohibition on partial strikes is that the employer has a right to know whether or not the employees are striking." 352 F.3d at 324. However, as discussed above, in *Vencare Ancillary Services, Inc. v. NLRB*, the Sixth Circuit relied upon the fact that the rehabilitation therapists in question remained  
30 on the job and performed some but not all of their duties in order to find that they had engaged in an unprotected partial strike.<sup>3</sup> 352 F.3d at 322-325. In addition, the evidence here establishes that Taylor had sent a text message to McGinnis at noon on January 4, stating that the Canvassing Employees did not intend to continue working that day. When McGinnis arrived at the Menlo Park Mall, the Canvassing Employees  
35 and the Team Leaders informed him that they did not intend to continue working, after telling McGinnis that they "had a lot to talk about," which McGinnis understood to mean that they were still discussing the new compensation plan. McGinnis responded by terminating them all. Thus, the evidence establishes that the Canvassing Employees informed McGinnis that they intended to completely stop their work for the remainder of  
40 the day.

For all of the foregoing reasons, the evidence does not establish that the Canvassing Employees engaged in an unprotected partial strike by attending the January 4 Team Meeting and subsequently refusing to perform any work for the  
45 remainder of that day.

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<sup>3</sup> The Board in *Vic Koenig Chevrolet*, cited by the Sixth Circuit in connection with the employer notice rationale discussed above, also found that the employee in that case "declar[ed] his intention to engage in a partial strike" by stating that he would perform only some and not all of his assigned work. 263 NLRB 646, 649-650 (1982).

5 Finally, as set forth above, Momentum argues that the January 4 work stoppage was not protected because the Canvassing Employees violated the company's property rights pursuant to *Quietflex Mfg. Co.*, 344 NLRB 1055 (2005). Because the evidence here establishes that the Canvassing Employees' work stoppage did not implicate employer property rights, the standard articulated in *Quietflex Mfg. Co.* is not pertinent. 10 Moreover, application of the *Quietflex Mfg. Co.* analysis would still result in a conclusion that the work stoppage was protected.

As General Counsel argues, the analysis set forth in *Quietflex Mfg. Co.* is specifically applicable "in the context of an on-site work stoppage," and the factors it 15 which comprise the standard were developed in that specific scenario. 344 NLRB at 1056, 1056-1059. The factors articulated in *Quietflex Mfg. Co.* to determine whether a work stoppage has lost the Act's protection proceed from the premise that the Act's protections for work stoppages encompass "the right to remain on an employer's property for a reasonable period of time 'in a sincere effort to meet with management' 20 over workplace grievances." *Los Angeles Airport Hilton Hotel & Towers*, 360 NLRB 1080, 1083 (2014), *enf'd.* 789 F.3d 154 (D.C. Cir. 2015), quoting *Roseville Dodge, Inc. v. NLRB*, 882 F.2d 1355, 1359 (8<sup>th</sup> Cir. 1989). However, the Board has also acknowledged an employer's right to "protect their private property and legitimate business interests" from "undue interference" by employees, such as occupation or 25 seizure of an employer's facility. *Los Angeles Airport Hilton Hotel & Towers*, 360 NLRB at 1083, citing *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240, 256 (1939). Or, as the Board stated in *Quietflex Mfg. Corp.*, "at some point, an employer is entitled to exert its private property rights and demand its premises back." 344 NLRB at 1056, quoting *Cambro Mfg. Co.*, 312 NLRB 634 (1993). The Board thus uses the criteria listed in 30 *Quietflex Mfg. Corp.* to strike a balance accommodating both the private property rights of employers and the Section 7 rights of employees. *Los Angeles Airport Hilton Hotel & Towers*, 360 NLRB at 1083; see also *Wal-Mart Stores, Inc.*, 364 NLRB No. 118 at p. 3 (2016). Consequently, the *Quietflex Mfg. Corp.* analysis has generally been utilized by the Board to evaluate the protected status of employee activity occurring on the 35 employer's property, and most often in the employer's facility. See *Wal-Mart Stores, Inc.*, 364 NLRB No. 118 at p. 2-3 (employees engaged in work stoppage and other activities inside store's customer service area and central aisle for an hour and a half); *Los Angeles Airport Hilton Hotel & Towers*, 360 NLRB at 1080-1081, 1082-1087 (employees gathered in hotel's employee cafeteria and remained for approximately 2 ½ 40 hours, refusing to leave, while demanding to meet with management); *Anglo Kemlite Laboratories, Inc.*, 360 NLRB 319, 320-321 (2014), *enf'd.* 833 F.3d 824 (7<sup>th</sup> Cir. 2016) (employees gathered and remained in facility's assembly area during shift, while attempting to meet with owner regarding wage increase); *Atlantic Scaffolding Co.*, 356 NLRB 835, 835-836 (2011).

45 In the instant case, by contrast, the Canvassing Employees' work stoppage did not implicate Momentum's property rights. The work stoppage did not take place on Momentum's premises; the Canvassing Employees had left the facility after the Team Meeting, and gone to the Menlo Park Mall, where they decided to stop working for the 50 remainder of the day. When McGinnis arrived at the Mall and confirmed that the

5 Canvassing Employees did not intend to continue working that day, he simply fired them, collected the keys to the company vehicles, and left. Thus, the work stoppage did not occur on Momentum's property or otherwise implicate its property rights, and application of the *Quietflex Mfg. Corp.* analysis intended to balance employer property rights and employees' rights under Section 7 to engage in protected activity is  
 10 unnecessary. See *Atlantic Scaffolding Co.*, 356 NLRB at 837 (absent any "meaningful impairment of property rights, there is nothing to balance against the employees' rights under the Act").

Momentum analogizes the instant case to *Nellis Cab Co.*, 362 NLRB 1587  
 15 (2015), to argue that application of the *Quietflex* factors is appropriate. In *Nellis Cab Co.*, the Board applied the *Quietflex* analysis in order to determine the protected status of an "extended break" taken by taxi drivers employed by 16 certified taxicab companies in Las Vegas, in order to express their opposition to the Nevada Taxicab Authority's proposal to issue additional taxi medallions. *Nellis Cab Co.*, 362 NLRB at 1587-1590.  
 20 However, the Board's use of the *Quietflex* factors in that case turned on the employer's ownership of the taxicabs driven by the employees, including during the period of the extended break, and the medallions required by the Taxicab Authority in order to legally operate them. Thus, the Board in *Nellis Cab Co.* described the taxicabs as "the equivalent in this case of the Respondent's 'premises.'" 362 NLRB at 1589. The Board  
 25 consequently emphasized that the employer "never directed the drivers to return the taxicabs during the extended break," analogizing that fact to "an on-premises work stoppage where employees were never warned they must return possession of the premises to the employer." *Nellis Cab Co.*, 362 NLRB at 1589. The Board also noted that drivers who were ordered to return their taxis did so, and as a result did not "seize"  
 30 the employer's property or "means of production." *Nellis Cab Co.*, 362 NLRB at 1589, and at 1589, fn. 15. Here, by contrast, the employees were not in possession of Momentum's vans, or any other company property, during the period of their work stoppage. Indeed, after being informed that the Canvassing Employees did not intend to return to work, McGinnis immediately discharged them, took the keys to the company  
 35 vans, and left. Thus, Momentum's property rights were not implicated in the work stoppage here in the manner of the taxicabs and medallions at issue in *Nellis Cab Co.*

Furthermore, even if the *Quietflex* analysis were relevant, the record establishes that the Canvassing Employees' activity was protected pursuant to that standard. The  
 40 ten factors evaluated pursuant to *Quietflex* are as follows: (1) the reason the employees ceased working; (2) whether the work stoppage was peaceful; (3) whether the work stoppage interfered with production, or deprived the employer of access to its property; (4) whether the employees had an adequate opportunity to present grievances to management; (5) whether employees were given any warning that they must leave  
 45 the premises or face discharge; (6) the duration of the work stoppage; (7) whether the employees were represented or had an established grievance procedure; (8) whether the employees remained on the premises beyond their shift; (9) whether the employees attempted to seize the employer's property; and (10) the reason for which the employees were ultimately discharged. 344 NLRB at 1056-1057.

5 The record evidence here establishes that the Canvassing Employees' work  
 stoppage was protected pursuant to the *Quietflex* criteria. The reason for the  
 Canvassing Employees' work stoppage militates in favor of a finding that the work  
 stoppage was protected, as the parties have stipulated that the Canvassing Employees  
 who decided to engage in the work stoppage did so to protest Naim's unlawful  
 10 discharge and Momentum's implementation of the new compensation plan. Although  
 Momentum contends that management did not know the reason for the work stoppage,  
 the evidence establishes that McGinnis understood that the Canvassing Employees  
 were discussing the compensation plan when he arrived at the Mall, and Momentum  
 had effectuated Naim's discharge that morning and expelled him from the Team  
 15 Meeting an hour or so earlier. There is no dispute that the work stoppage was peaceful,  
 so this factor favors a conclusion that the work stoppage was protected as well.

Momentum contends that the third factor – whether the work stoppage interfered  
 with production or deprived the employer of access to its property – tends to establish  
 20 that the work stoppage was unprotected. But while Momentum contends that the work  
 stoppage deprived it of access to its company vans, in fact McGinnis took the keys to  
 those vans immediately after discharging the Canvassing Employees when the Team  
 Leaders told McGinnis that the Canvassing Employees did not intend to return to work.  
 Thus, the work stoppage did not deprive Momentum of its property. Momentum further  
 25 argues that the work stoppage interfered with production by preventing certain  
 Canvassing Employees who did not want to participate, including Miles Scott and Bryan  
 Rodriguez, from continuing to work on January 4. However, the evidence does not  
 establish that the Canvassing Employees who supported the work stoppage deliberately  
 interfered with the prerogatives of those who did not wish to participate. Scott and  
 30 Rodriguez were unable to continue working on January 4, as a result of the Team  
 Leaders' having withheld their own labor, as the Team Leaders were responsible for  
 driving the vans transporting the Canvassing Employees, and not as a result of any  
 other conduct on the part of the Canvassing Employees who supported the work  
 stoppage deliberately designed to interfere with the work of other Momentum  
 35 employees. See *Los Angeles Airport Hilton Hotel and Towers*, 360 NLRB at 1084-  
 1085, and at 1085, fn. 19 (distinguishing striker interference with work performed by  
 non-striking employees from "disruption...caused by work the strikers themselves did  
 not perform while engaged in the work stoppage"). Thus, the third of the *Quietflex*  
 factors supports a finding that the work stoppage was protected as well.

40 Momentum contends that the fourth of the *Quietflex* criteria also militates in favor  
 of a finding that the work stoppage was unprotected. Specifically, Momentum contends  
 that the Canvassing Employees had an adequate opportunity to present a grievance or  
 complaint to management regarding the changes in the compensation plan at the Team  
 45 Meetings held each morning. This argument is unconvincing, however, given the  
 unlawful interrogation, threats of demotion or discharge, and implication that the  
 Canvassing Employees' protected concerted activities were under surveillance two days  
 prior to the work stoppage. It is further, and decisively, undermined by the fact that the  
 Canvassing Employees learned of Momentum's unlawful retaliatory discharge of Naim  
 50 at the Team Meeting immediately preceding the January 4 work stoppage. As a result,

5 this factor does not tend to establish that the work stoppage was unprotected. Nor does  
 the fifth of the *Quiettflex* factors, which considers whether employees were given any  
 warning that they must leave the premises or face discharge, as the Canvassing  
 Employees were not *on* Momentum's premises when McGinnis confronted them at the  
 Menlo Park Mall.

10 The sixth through tenth of the *Quiettflex* criteria also favor a conclusion that the  
 work stoppage was protected. The duration of the work stoppage is not an issue, as  
 McGinnis discharged the Canvassing Employees immediately after they announced that  
 they would not return to work. The Canvassing Employees were not represented by a  
 15 labor union, and although Momentum claims that it had an "open door" policy for the  
 presentation of grievances, the only evidence it refers to in order to substantiate this  
 contention involves the daily Team Meetings. The employees were not on Momentum's  
 premises during the work stoppage and as such could not have remained there beyond  
 their shift. The Canvassing Employees made no attempt to "seize" Momentum's  
 20 property and in fact readily gave McGinnis the keys to the company vans in response to  
 his request. Finally, Momentum admits that the Canvassing Employees were  
 discharged because they engaged in the January 4 work stoppage, which it contends  
 was unprotected. The record evidence thus establishes that all of the *Quiettflex* factors  
 support a finding that the Canvassing Employees' January 4 work stoppage was  
 25 protected.

For all of the foregoing reasons, the evidence establishes that the Canvassing  
 Employees' work stoppage on January 4 constituted protected concerted activity  
 pursuant to Section 8(a)(1) of the Act.

30 The remainder of General Counsel's *prima facie* case is amply supported by the  
 record evidence. Animus is established by Momentum's admitted violations of Section  
 8(a)(1) on January 2 – DiLeo's unlawful interrogation of the Canvassing Employees, his  
 threats of demotion and discharge, and his implication that the Canvassing Employees'  
 35 protected concerted activities were under surveillance – and by its discharge of Naim on  
 January 4 in retaliation for his concerted complaints regarding the new compensation  
 plan. The discharges took place immediately after the Canvassing Employees  
 communicated their intent to engage in the work stoppage to McGinnis. And  
 Momentum does not deny that it discharged the Canvassing Employees because they  
 40 engaged in the January 4 work stoppage. As a result, the evidence overall establishes  
 that Momentum discharged the Canvassing Employees in retaliation for their protected  
 work stoppage on January 4, 2020, in violation of Section 8(a)(1) of the Act.

## 45 Conclusions of Law

1. Respondent Pro Custom Solar LLC d/b/a Momentum Solar is an employer  
 engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

5           2. Respondent violated Section 8(a)(1) of the Act on January 2, 2020 by interrogating employees regarding their protected concerted activities, implying that their protected concerted activities were under surveillance, and threatening employees with demotion and discharge in retaliation for their protected concerted activities.

10           3. Respondent violated Section 8(a)(1) of the Act by discharging Mohammed Naim on January 4, 2020 in retaliation for his protected concerted complaints regarding Momentum's new compensation plan, thereby interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

15           4. Respondent violated Section 8(a)(1) of the Act by discharging the following employees on January 4, 2020 in retaliation for their protected concerted work stoppage:

20	Taliyah Avent	Miles Scott
	Seynabou Fall	Ejahnna Banks
	Howard Knight, Jr.	Gykeese Bosenan
	Kenny Nguyen	Malcom Cotton
	Maxzim Wong	Manuel Fernandez
	Yoselin Zamora	Steven Mercedes
25	Elijah Byrd	Mariah Robinson
	Bryan Rodriguez	Eric Sapp
	Lisabeth Senvage	

30           6. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### The Remedy

35           Having found that Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the Act's policies.

40           Respondent, having unlawfully discharged the above employees in retaliation for their protected concerted activities on January 4, 2020, shall offer them reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges they previously enjoyed. Respondent shall also make the above employees whole for any loss of earnings and other benefits they may have suffered as a result of Respondent's unlawful discharges. The make-whole remedy shall be computed in accordance with  
45   *F.W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). Pursuant to *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enf'd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), Respondent shall compensate the  
50   above employees for any search-for-work and interim employment expenses, regardless of whether those expenses exceed their interim earnings. Search-for-work

5 and interim employment expenses shall be calculated separately from taxable net back  
pay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as  
prescribed in *Kentucky River Medical Center*, supra. Respondent shall further  
compensate the above employees for the adverse tax consequences, if any, of  
receiving a lump sum back pay award, and file a report allocating backpay to  
10 appropriate years, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324  
(2016). The Regional Director will then assume responsibility for transmission of the  
report to the Social Security Administration as appropriate. In addition to the backpay-  
allocation report, Respondent shall file with the Regional Director copies of  
corresponding W-2 forms reflecting the backpay awards for all of the above employees.  
15 *Cascades Containerboard Packing—Niagra*, 370 NLRB No. 76 (2021).

Respondent shall also be required to remove from its files any reference to the  
unlawful discharge of the above employees, and to notify them in writing that this has  
been done and that the discharges will not be used against them in any way.

Respondent shall post an appropriate information notice, as described in the  
attached appendix. This notice shall be posted in the Respondent's facility in South  
Plainfield, New Jersey, wherever notices to employees are regularly posted, for 60  
days, without anything covering the notice or defacing its contents. In addition to the  
25 physical posting of paper notices, notices shall be distributed electronically, posted on  
an intranet or an internet site, and/or other electronic means, to the extent Respondent  
customarily communicates with its employees in such a manner. In the event that,  
during the pendency of these proceedings, Respondent has gone out of business or  
closed its South Plainfield, New Jersey facility, Respondent shall duplicate and mail, at  
30 its own expense, a copy of the notice to all current employees and former employees  
employed by Respondent at any time since January 1, 2020.

On these findings of fact and conclusions of law, and on the entire record, I issue  
the following recommended:<sup>4</sup>

### Order

Pro Custom Solar, LLC d/b/a Momentum Solar, its officers, agents, successors  
and assigns shall

#### 1. Cease and desist from

(a) Interrogating employees regarding their protected concerted activities.

(b) Threatening employees with demotion and discharge if they engage in  
protected concerted activities.

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<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.



5 (c) Implying that employees' protected concerted activities are under surveillance.

10 (d) Discharging or otherwise discriminating against employees in retaliation for their protected concerted complaints regarding wages, hours, and other terms and conditions of employment or other protected concerted activities.

(e) Discharging or otherwise discriminating against employees in retaliation for engaging in a protected work stoppage.

15 (f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

20 Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Mohammed Naim and the following employees full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges enjoyed:

Taliyah Avent	Miles Scott
Seynabou Fall	Ejahanna Banks
Howard Knight, Jr.	Gykeese Bosenan
Kenny Nguyen	Malcom Cotton
Maxzim Wong	Manuel Fernandez
Yoselin Zamora	Steven Mercedes
Elijah Byrd	Mariah Robinson
Bryan Rodriguez	Eric Sapp
Lisabeth Senvage	

35 (b) Make whole Mohammed Naim and the employees listed in paragraph (a), above, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

40 (c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge of Mohammed Naim and the other employees listed in paragraph (a), above, on January 4, 2020, and within 3 days thereafter, notify these employees in writing that this has been done and that the discharges will not be used against them in any way.

50 (d) Make Mohammed Naim and the other employees listed in paragraph (a), above, whole for their reasonable search-for-work and interim employment expenses, in the manner set forth in the remedy section above.

5 (e) Compensate Mohammed Naim and the other employees listed in paragraph  
(a), above, for the adverse tax consequences, if any, of receiving a lump-sum backpay  
award, and file with the Regional Director for Region 22, within 21 days of the date the  
amount of backpay is fixed, either by agreement or by a Board order, a report allocating  
the backpay award to the appropriate calendar years for each employee.

10 (f) Preserve and, within 14 days of a request, or such additional time as the  
Regional Director may allow for good cause shown, provide at a reasonable place  
designated by the Board or its agents, all payroll records, social security payment  
records, timecards, personnel records and reports, and all other records, including an  
15 electronic copy of such records if stored in electronic form, necessary to analyze the  
amount of backpay due under the terms of this order.

(g) Within 14 days after service by the Region, post at its facility in South  
Plainfield, New Jersey, copies of the attached notice marked "Appendix." Copies of the  
20 notice, on forms provided by the Regional Director for Region 22, after being signed by  
the Respondent's authorized representative, shall be posted by the Respondent and  
maintained for 60 consecutive days in conspicuous places including all places where  
notices to employees are customarily posted. Reasonable steps shall be taken by  
Respondent to ensure that the notices are not altered, defaced, or covered by any other  
25 material. If Respondent has gone out of business or closed the South Plainfield, New  
Jersey facility, Respondent shall duplicate and mail, at its own expense, a copy of the  
notice to all current employees and former employees employed by Respondent at any  
time since January 1, 2020.

30 (g) Within 21 days after service by the Region, file with the Regional Director for  
Region 22 a sworn certification of a responsible official on a form provided by the  
Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. August 11, 2021

35 

Lauren Esposito  
Administrative Law Judge

## **APPENDIX A**

### **NOTICE TO EMPLOYEES**

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### **FEDERAL LAW GIVES YOU THE RIGHT TO**

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you regarding your protected concerted activities.

WE WILL NOT threaten you with demotion and discharge for engaging in protected concerted activities.

WE WILL NOT make statements implying that your protected concerted activities are under surveillance.

WE WILL NOT discharge or otherwise discriminate against you in retaliation for your protected concerted complaints regarding wages, hours, and other terms and conditions of employment or other protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against you in retaliation for engaging in a protected work stoppage.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed to you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Mohammed Naim and the following employees discharged on January 4, 2020, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges enjoyed:

Taliyah Avent  
Seynabou Fall  
Howard Knight, Jr.  
Kenny Nguyen  
Maxzim Wong

Miles Scott  
Ejahanna Banks  
Gykeese Bosenan  
Malcom Cotton  
Manuel Fernandez

Yoselin Zamora  
 Elijah Byrd  
 Bryan Rodriguez  
 Lisabeth Senvage

Steven Mercedes  
 Mariah Robinson  
 Eric Sapp

WE WILL make whole Mohammed Naim and the other employees listed above for any loss of earnings and other benefits suffered as a result of the discrimination against them, less interim earnings, plus interest.

WE WILL compensate Mohammed Naim and the other employees listed above for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the date that the amount of backpay is fixed by agreement or Board order, a report allocating the backpay award to the appropriate calendar year.

WE WILL within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Mohammed Naim and the other employees listed above, and WE WILL within 3 days thereafter, notify these employees in writing that this has been done and that the discharges will not be used against them in any way.

PRO CUSTOM SOLAR D/B/A MOMENTUM SOLAR

\_\_\_\_\_  
 (Employer)

Dated \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
 (Representative)

\_\_\_\_\_  
 (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlr.gov](http://www.nlr.gov).

20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102-3110

(973)645-2100, Hours: 8:30 a.m. to 5:00 p.m.

The Administrative Law Judge's decision can be found at [www.nlr.gov/case/22-CA-254647](http://www.nlr.gov/case/22-CA-254647) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (973)645-2100